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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

KENNETH R. EVANS,
Plaintiff,

v.

SHELLPOINT MORTGAGE
SERVICES aka NEWREZ, LLC, a
Delaware Corporation; MTC
FINANCIAL, dba TRUSTEE CORPS, a
California Corporation; and THE BANK
OF NEW YORK MELLON FKA THE
BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-21,
Defendants.

No.

NOTICE OF REMOVAL

TO: Nathan J. Arnold and Emanuel Jacobowitz,
Cloutier, Arnold, Ortega, PLLC, Attorneys for Plaintiff;
Michael S. DeLeo,
Peterson Russell Kelly, PLLC, Attorneys for Defendant MTC
Financial Inc. d/b/a Trustee Corps

AND TO: The Clerk of the Court:

Defendants NewRez LLC dba Shellpoint Mortgage Servicing (“Shellpoint;”
erroneously named as “Shellpoint Mortgage Services”), and The Bank of New

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1 York Mellon fka The Bank of New York, as Trustee for the Certificateholders
2 CWABS, Inc. Asset-Backed Certificates, Series 2006-21, collectively “Removing
3 Defendants” for this pleading, seek to remove this case, originally filed in the
4 Chelan County Superior Court under Case Number 19-2-00644-04, to the United
5 States District Court for the Eastern District of Washington.
6

7
8 Removal should occur pursuant to 28 U.S.C. § 1332 based on the grounds
9 set forth below. Removing Defendants also expressly preserve all Rule 12
10 objections. *See* Wright & Arthur R. Miller, *Federal Practice and Procedure* §
11 1395 (3d ed. 2004).
12

13 I. STATEMENT OF FACTS

14 On or about July 26, 2019, Plaintiff filed this action in Chelan County
15 Superior Court seeking to prevent the foreclosure sale of real property, and
16 asserting claims for violations of the Washington Deed of Trust Act, Consumer
17 Protection Act, Civil Conspiracy, Quiet Title, Declaratory Relief, and Injunctive
18 Relief.¹
19
20

21 II. BASIS FOR REMOVAL

22 Removal of this action based on diversity jurisdiction is sought under 28
23 U.S.C. § 1332. Removal is proper under § 1332 where (1) the amount in
24

25 _____
26 ¹ The Complaint is attached hereto as “Exhibit A.”

1 controversy exceeds \$75,000, exclusive of interests and costs; and (2) the suit is
2 between citizens of different states.

3
4 Although Plaintiff has included MTC Financial dba Trustee Corps as a
5 defendant, the Complaint contains no substantive allegations of liability regarding
6 the foreclosure trustee.² Thus, MTC Financial dba Trustee Corps is a nominal
7 defendant and should not be considered in determining jurisdiction. *See Strotek*
8 *Corp. v. Air Transp. Ass'n of Amer.*, 300 F.3d 1129, 1133 (9th Cir. 2002); *accord*
9 *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (“sham”
10 defendants should be disregarded for purposes of diversity).
11
12

13 **A. The District Court Has Jurisdiction Over Plaintiff’s Claims.**

14 **1. Plaintiff Has Placed More Than \$75,000 in Controversy.**

15
16 “In actions seeking declaratory or injunctive relief, it is well established that
17 the amount in controversy is measured by the value of the object of litigation.”
18 *Henderson v. Nationstar Mortg. Co., LLC*, 2008 WL 302372, at *1 (W.D. Wash.
19 2008), *quoting Cohn v. Petsmart, Inc.*, 281 F.3d 837, 839 (9th Cir. 2002); *see also*
20 *Reyes v. Wells Fargo Bank, N.A.*, 2010 WL 2629785, at *4-*5 (N.D. Cal. 2010)
21
22

23 ² Plaintiff’s Deed of Trust Act-based cause of action for a purported violation of
24 the Washington Foreclosure Fairness Act is impermissible pursuant to *Frias v.*
25 *Asset Foreclosure Services, Inc. et al.*, 181 Wn.2d 412 (2014).
26

(finding amount in controversy requirement met where plaintiffs sought injunctive relief preventing bank from foreclosing and the value of the property exceeded \$75,000). Further, “[i]f the primary purpose of a lawsuit is to enjoin a bank from selling or transferring property, then the property is the object of the litigation.” *Reyes*, 2010 WL 2629785, at *4, *quoting Garfinkle v. Wells Fargo Bank, N.A.*, 2010 WL 1658569, at *2 (E.D. Cal. Apr. 23, 2010) (holding that the object of the litigation was the property that plaintiff sought to enjoin the defendant from selling at future foreclosure sale).

Plaintiff seeks to prohibit a trustee’s sale of real property which was secured by a \$397,500 loan. *See* Compl., ¶ F (including copy of recorded Deed of Trust securing the subject property). This claim places the amount in controversy regarding the “object of litigation” above the \$75,000 threshold.³

2. Complete Diversity Exists.

Complete diversity exists because Plaintiff is a Washington resident, while Removing Defendants are foreign entities. *Compare* Compl. ¶¶ 6, 8 (non-Washington corporations), *with* ¶ 9 (Plaintiff’s residence in Washington).

³ In addition, the possibility of treble damages claimed in Plaintiff’s CPA cause of action must be added to the amount in controversy. *See Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000).

1 Although MTC Financial dba Trustee Corps is a Washington corporation—
2 contrary to Plaintiff’s identification of it as a California corporation—it is a
3 nominal defendant that the Court should disregard for purposes of diversity.
4

5 Courts have called trustees “*the paradigmatic nominal defendant[s]*,” which
6 “[are] not considered for the purpose of establishing diversity jurisdiction”
7 particularly where a trustee is joined “merely because he occupies the position
8 pursuant to a deed of trust.” *Prasad v. Wells Fargo Bank, N.A.*, 2011 WL
9 4074300, at *2-*3 (W.D. Wash. 2011) (emphasis added), *quoting SEC v. Cherif*,
10 933 F.2d 403, 414 (7th Cir. 1991) (noting that “most courts that have considered
11 the issue of whether a trustee under a deed of trust is a nominal defendant in an
12 action challenging foreclosure... have taken the position advanced by [the
13 lender]”, i.e., that the trustee is nominal); *see also Gogert v. Regional Trustee*
14 *Serv. ’s*, 2012 WL 289205 (W.D. Wash. Jan. 31, 2012) (“nominal parties to an
15 action do not destroy diversity, and trustees... are nominal parties.”); *accord*
16 *Morris v. Princess Cruises, Inc.*, *supra.* at 1067, *citing McCabe v. General Foods*
17 *Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).
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23 Here, Plaintiff named MTC Financial dba Trustee Corps because of the
24 position it occupied pursuant to the Deed of Trust, *i.e.*, carrying out the actual
25 foreclosure process. The Complaint contains no substantive and/or viable
26

1 allegations regarding MTC Financial dba Trustee Corps as no sale of the Property
2 has occurred. *See Frias, supra*. Thus, MTC Financial dba Trustee Corps should
3 be considered a nominal defendant for purposes of diversity jurisdiction.
4

5 **B. Removal Is Timely.**

6 Removal of this action is timely because the notice of removal has been filed
7 within 30 days of service of the summons and complaint on The Bank of New
8 York Mellon fka The Bank of New York, as Trustee for the Certificateholders
9 CWABS, Inc. Asset-Backed Certificates, Series 2006-21, which occurred on July
10 26, 2019. *See* 28 U.S.C. § 1446(b).
11
12

13 A copy of the complete state court record is attached to the Verification of
14 State Court Records, which will be filed as required by 28 U.S.C. § 1446(d).
15

16 **C. Consent to Removal.**

17 Co-Defendant MTC Financial dba Trustee Corps consents to removal of this
18 action through its undersigned counsel.
19

20 **D. Removal to the Eastern District of Washington Is Proper.**

21 Removal is proper to the Eastern District of Washington because the district
22 embraces Chelan County, Washington. 28 U.S.C. § 1441(a).
23

24 //

25 //

1 **E. Removing Defendants Have Complied with 28 U.S.C. § 1446**
2 **Requirements.**
3

4 Pursuant to 28 U.S.C. § 1446(d), attached as Exhibit A to this notice is all
5 other process, pleadings, and orders served in this action. Additionally, Removing
6 Defendants will promptly file a copy of this Notice of Removal with the Clerk of
7 the Chelan County Superior Court.
8

9 **III. CONCLUSION**

10 Removing Defendants respectfully give notice that the above-entitled action
11 is to be removed from Chelan County Superior Court to the United States District
12 Court for the Eastern District of Washington.
13

14 DATED this 21st day of August, 2019.

15 **WRIGHT FINLAY & ZAK, LLP**
16

17 /s/ Joseph T. McCormick III

18 Joseph T. McCormick III, WSBA #48883

19 Of Attorneys for Defendants NewRez LLC dba Shellpoint Mortgage
20 Servicing (erroneously named as “Shellpoint Mortgage Services”), and The
21 Bank of New York Mellon fka The Bank of New York, as Trustee for the
22 Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006-21

22 Consent to Removal:

23 **PETERSON RUSSELL KELLY, PLLC**
24

25 /s/ Michael S. DeLeo, per e-mail authorization

26 Michael S. DeLeo, WSBA #22037

 Of Attorneys for Defendant MTC Financial Inc. d/b/a Trustee Corps

CERTIFICATE OF SERVICE

I, Karina Krivenko, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am employed with the law firm of Wright, Finlay and Zak, LLP, I am a resident of the State of Washington, over the age of 18 years old, not a party to this action, and am competent to be a witness herein.

I hereby certify that on August 21, 2019, I caused to be served a copy of the Notice of Removal by Defendants Shellpoint Mortgage Servicing and The Bank Of New York Mellon As Trustee to the following parties and/or attorneys who have filed notices of appearance in this matter via first class mail:

Nathan J. Arnold
Emanuel Jacobowitz
Cloutier, Arnold, Ortega, PLLC
2701 First Avenue, Ste 200
Seattle, WA 98121
Attorneys for Plaintiff

Michael S. DeLeo
Peterson Russell Kelly, PLLC
10900 NE 4th St, Ste 1850
Bellevue, WA 98004
Attorneys for Defendant MTC Financial Inc. d/b/a Trustee Corps

Dated: August 21, 2019.

/s/Karina Krivenko
Karina Krivenko